

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

No. 2:03-mc-00118-MCE-JFM

v.

ALETHA M. ENSMINGER,

Defendant.

ORDER

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Plaintiff, the United States of America, has filed an application for a writ of continuing garnishment against Defendant. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On February 27, 2013, the Magistrate Judge filed findings and recommendations herein (ECF No. 21) which were served on the parties and which contained notice to the parties that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff filed partial objections to the findings and recommendations (ECF No. 22) and Defendant has filed objections to the findings and recommendations (ECF No. 23).

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1 The Court has reviewed the file and finds the findings and recommendations to be
2 supported by the record and by the Magistrate Judge's analysis. Accordingly, IT IS HEREBY
3 ORDERED that:

- 4 1. The findings and recommendations filed February 27, 2013, are ADOPTED IN
5 PART and REJECTED IN PART.
- 6 2. The application for writ of continuing garnishment is GRANTED.
- 7 3. Garnishee Pacific Dental Services, Inc., Parkway Dental Group and Orthodontics
8 and its successors or assigns, pay to the United States, in care of the U.S.
9 Department of Justice, twenty-five percent (25%) of all disposable wages earned
10 by Aletha M. Ensminger, which it has previously withheld since service of the
11 Writ, and it shall also provide the United States with a written, itemized
12 accounting, by pay period, of Dr. Ensminger's disposable wages and exact
13 amount that it withheld between service of the Writ on April 23, 2012, and
14 service of this Order;
- 15 4. Garnishee Pacific Dental Services, Inc., Parkway Dental Group and Orthodontics
16 and its successors or assigns, shall withhold and pay to the United States, in care
17 of the U.S. Department of Justice, twenty-five percent (25%) of all disposable
18 wages earned by Aletha M. Ensminger, and it shall also provide the United States
19 with a written, itemized accounting, by pay period, of Dr. Ensminger's disposable
20 wages and exact amount that it withholds and pays to the United States'
- 21 5. All payments shall be made payable to: "U.S. Department of Justice" and mailed
22 to: United States Attorney's Office, attention: Financial Litigation Unit, 501 I
23 Street, Suite 10-100, Sacramento, California 95814, unless directed otherwise by
24 the U.S. Attorney's Office;
- 25 6. Garnishee Pacific Dental Services, Inc., Parkway Dental Group and Orthodontics
26 and its successors or assigns, shall continue said withholdings and payments until

1 the debt to the United States, to wit the sum of \$137,564.02 as of December 1,
2 2012; plus accruing interest at the post-judgment interest rate of 1.25%
3 compounded annually, is paid in full or until the Garnishee no longer has custody,
4 possession or control of any property belong to Judgment Debtor Aletha M.
5 Ensminger or until further order of this Court.

- 6 7. The United States' request for a surcharge is GRANTED, and the findings and
7 recommendations denying this request are REJECTED. The United States is
8 entitled to the 10% surcharge authorized by the FDCPA. 28 U.S.C. § 3011(a).
9 Although the state court default judgment includes \$2,261 in attorney's fees,
10 those are not attorney's fees "in connection with the enforcement of the claim."
11 See 28 U.S.C. § 3011(b)(1). Thus, the fees from the underlying action do not
12 operate as a bar to the United States collecting the 10% surcharge authorized by
13 the FDCPA.

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15 Date: April 25, 2013

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17 MORRISON C. ENGLAND, JR., CHIEF JUDGE
18 UNITED STATES DISTRICT COURT
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